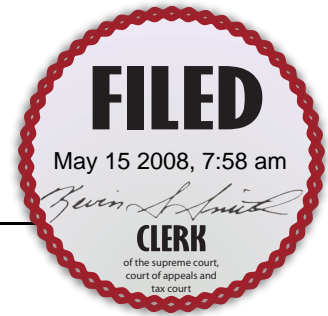


**Pursuant to Ind.Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the case.**

ATTORNEYS FOR APPELLANT:

JAMES H. HANSON
LYNNE D. LIDKE
Indianapolis, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

KOEHRING & SONS, INC.,

Appellant-Defendant,

vs.

STARKS MECHANICAL, INC.,

Appellee-Plaintiff.

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No. 03A01-0712-CV-560

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Roderick D. McGillivray, Judge
Cause No. 03D02-0712-CC-00138

MAY 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

In this interlocutory appeal of right under Indiana Appellate Rule 14(A)(8), Koehring and Sons, Inc. (Koehring), appeals the trial court's denial of its motion to transfer venue to Marion County as the preferred venue. We reverse.

The sole issue for our review is whether the trial court erred in denying Koehring's motion.

Koehring is a mechanical contractor that provides heating, ventilation, and air conditioning services. Its principal office is located in Marion County, Indiana. In 2006, Koehring was the mechanical subcontractor on the Southerly Waste Water Treatment Plant rehabilitation construction project in Columbus, Ohio. In March 2006, Koehring accepted a bid from Starks Mechanical, Inc., a plumbing contractor, to provide materials and labor for the hydronic piping and breaching at the Southerly project. Starks' principal office is located in Bartholomew County, Indiana.

In October 2007, following a contract dispute, Starks filed a claim for damages against Koehring in the Bartholomew County small claims court. One month later, Koehring filed a motion to transfer venue wherein it asked the court to: 1) transfer the action out of the small claims division to a court of general jurisdiction in Bartholomew County because Koehring's counterclaim exceeded the jurisdictional limit of the small claims court, and 2) then transfer the action to Marion County as the county of preferred venue.

The trial court granted Koehring's request to transfer the action out small claims court but denied the request to transfer the case to Marion County as the preferred venue. After the case was transferred to the Bartholomew Superior Court, Koehring filed a

second motion to transfer the action to Marion County. The trial court denied that motion as well. Koehring appeals.

At the outset we note that Starks has chosen not to file an appellate brief in this case. When an appellee fails to submit an appellate brief, it is within this court's discretion to reverse the trial court's ruling if the appellant makes a prima facie showing of reversible error. *Tamko Roofing Products, Inc. v. Dilloway*, 865 N.E.2d 1074, 1077 (Ind. Ct. App. 2007). Prima facie error is error appearing at first sight, on first appearance, or on the face of the argument. *Id.* This rule is not for the benefit of the appellant. *Id.* Rather, it was established so that the court might be relieved of the burden of controverting the arguments advanced for reversal where such a burden rests with the appellee. *Id.*

We now turn to Indiana Trial Rule 75, which governs venue requirements in Indiana. This rule contains ten subsections, each setting forth criteria establishing preferred venue. *American Family Insurance Company v. Ford Motor Company*, 857 N.E.2d 971, 973-74 (Ind. 2006). A complaint may be filed in any county in Indiana, but if the complaint is not filed in a county of preferred venue, the court is required to transfer the case to a preferred venue upon the proper request from a party. *Id.* at 974 (citing T.R. 75(A)). The rule does not create a priority among the subsections creating preferred venue. *Id.* If the complaint is filed in a county of preferred venue, the trial court has no authority to transfer the case based solely on preferred venue in one or more other counties. *Id.*

Trial Rule 75(A)(4) establishes preferred venue in “the county where . . . the principal office of a defendant organization is located” In this case, defendant Koehring’s principal office is located in Marion County. According to T.R. 75(A)(4), preferred venue is therefore in Marion County, and Koehring has established prima facie error in the trial court’s denial of its motion to transfer the case to Marion County as the preferred venue.

Reversed.

FRIEDLANDER, J., and ROBB, J., concur.